Article 8.

Bond.

§ 28A-8-1. Bond required before letters issue; when bond not required.

(a) Except as otherwise provided in subsection (b) of this section, every personal representative, before letters are issued, shall give bond, conditioned as provided in G.S. 28A-8-2.

(b) No bond shall be required of:

(1) A resident executor, unless the express terms of the will require a resident executor to give bond;

(2) A nonresident executor (or a resident executor who moves from this State subsequent to that executor's appointment) who has appointed a resident agent to accept service of process as provided in G.S. 28A-4-2(a) [28A-4-2(4)], when the express terms of the will excuse a nonresident executor from giving bond;

(3) A nonresident executor, when there is a resident executor named who has qualified as coexecutor unless the express terms of the will require them to give bond, or the clerk of superior court finds that such bond is necessary for the protection of the estate; or

(4) A personal representative appointed solely for the purpose of bringing an action for the wrongful death of the deceased until such time as the personal representative shall receive property into the estate of the deceased; or

(5) A personal representative that is a trust institution licensed under G.S. 53-159;

(6) A personal representative of an intestate who resides in the State of North Carolina when all of the heirs of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the personal representative from the necessity of giving bond; or

(7) A personal representative where the personal representative receives all the property of the decedent;

(8) An administrator with the will annexed who resides in the State of North Carolina when all of the devisees of the decedent are over 18 years of age and file with the clerk of superior court a written waiver instrument agreeing to relieve the administrator with the will annexed of the necessity of giving bond. (C.C.P., ss. 467, 468; 1870-1, c. 93; Code, ss. 1387, 1388, 2169; Rev., s. 29; C.S., s. 39; 1923, c. 56; 1967, c. 41, s. 1; 1973, c. 1329, s. 3; 1975, c. 300, s. 3; 1977, c. 29; 1981, c. 428; c. 599, ss. 5, 6; 2011-339, s. 5; 2011-344, s. 4.)

§ 28A-8-1.1. Deposited money; exclusion in computing amount of bond.

Notwithstanding the provisions of G.S. 28A-8-1, in any proceeding for the determination of the amount of bond to be required of the personal representative or testamentary trustee, whether at the time of appointment or subsequently, when it appears that the estate of the decedent or the testamentary trust includes money which has been or will be deposited in a bank or banks in this State, or money which has been or will be invested in an account or accounts in an insured savings and loan association or associations upon condition that such money will not be withdrawn except on authorization of the court, the court may, in its discretion, order such money so deposited or so invested and shall exclude such deposited money from the computation of the amount of such bond or reduce the amount of bond to be required in respect of such money to such an amount as it may deem reasonable.

The petitioner for letters testamentary, of administration, or of trusteeship may deliver to any such bank or association any such money in the petitioner's possession, or may allow such bank to retain any such money already in its possession, or may allow such association to retain any such money already invested with it; and, in either event, the petitioner shall secure and file with the court a written receipt including the agreement of the bank or association that such money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters testamentary, of administration, or of trusteeship had been issued.

The term "account in an insured savings and loan association" as used in this section means an account insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the General Statutes of North Carolina.

The term "money" as used in this section means the principal of the decedent's estate and does not include the income earned by the principal of the decedent's estate which may be withdrawn without any authorization of the court. (1977, c. 870, s. 1; 2011-344, s. 4.)

§ 28A-8-2. Provisions of bond.

A bond given pursuant to this Article shall be:

(1) Payable to the State to the use of all persons interested in the estate; and

(2) Conditioned that the personal representative giving the bond shall faithfully execute the trust reposed in the personal representative and obey all lawful orders of the clerk of superior court or other court touching the administration of the estate committed to the personal representative; and

(3) In an amount not less than:

  a. One and one-fourth times the value of all personal property of the decedent when the bond is secured by a suretyship bond executed by a corporate surety company authorized by the Commissioner of Insurance to do business in this State, provided that the clerk of superior court, when the value of the personal property to be administered by the personal representative exceeds one hundred thousand dollars ($100,000), may accept bond in an amount equal to the value of the personal property plus ten percent (10%) thereof; or

  b. Double the value of all personal property of the decedent when the bond is secured by one of the methods provided in subdivision (4)b, (4)c or (4)d; such value of said personal property to be ascertained by the clerk of superior court by examination, on oath, of the applicant or of some other person determined by the clerk to be qualified to testify as to its value; and

(4) Secured by one or more of the following:

  a. Suretyship bond executed, at the expense of the estate, by a corporate surety company authorized by the Commissioner of Insurance to do business in this State;

  b. Suretyship bond executed and justified upon oath before the clerk of superior court by two or more sufficient personal sureties each of whom shall reside in and own real estate in North Carolina and shall have

assets with an aggregate value above encumbrances of not less than the amount of the penalty of the required bond;

c. A first mortgage or first deed of trust in form approved by the administrative officer of the courts on real estate located in North Carolina:
   1. Executed by the owner, and conditioned on the performance of the obligations of the bond, and
   2. Containing a power of sale which, in the case of a mortgage, is exercisable by the clerk of superior court upon a breach of any condition thereof, or, in the case of a deed of trust, is exercisable by the trustee after notice by the clerk of superior court that a breach of condition has occurred.

   The clerk of superior court shall not accept such mortgage or deed of trust until it shall have been properly registered in the county or counties in which the real estate is located, and the clerk of superior court is satisfied that the real estate subject to the mortgage or deed of trust is worth the amount to be secured thereby, and that the mortgage or deed of trust is a first charge on said real estate. No such mortgage or deed of trust shall be cancelled or surrendered until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d).

d. A deposit by the owner with the clerk of superior court of negotiable securities, of a kind permitted by law to be proper investments for fiduciaries exercising due care, having a fair market value determined by the clerk to be equal to the amount of the penalty of the bond. Such securities shall be properly endorsed, delivered to the clerk of superior court, and accompanied by a security agreement containing a power of sale authorizing the clerk of superior court to sell them in the event the person to whom letters are being issued commits a breach of any duty imposed upon that person by law in respect of that person's office. Such securities shall not be surrendered by the clerk of superior court to the owner until the approval of the final account, unless substitution is permitted as provided in G.S. 28A-8-3(d). For the purposes of determining the value of the assets of the personal sureties in subdivision (4)b, or the value of the real estate in subdivision (4)c, or the value of the negotiable securities in subdivision (4)d, the clerk of superior court may require a certificate of the value of such property by one or more persons not interested in the estate determined by the clerk to be qualified to certify such value. (C.C.P., s. 468; 1870-1, c. 93; Code, s. 1388; Rev., s. 319; C.S., s. 33; 1935, c. 386; 1949, c. 971; 1967, c. 41, s. 1; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-8-3. Modification of bond requirements.

(a) Increase of Bond or Security in Case of Inadequacy or Insufficiency. –

(1) The clerk of superior court, on the clerk's own motion, may require the personal representative to give a new bond or to furnish additional security if the clerk of superior court finds that the bond filed pursuant to this Article, or its security, is

insufficient, inadequate in amount, or that any of the individual sureties has become or is about to become a nonresident or, in the case of a corporate surety, has withdrawn or is about to withdraw from doing business in this State.

(2) Any interested person may file a verified petition in accordance with Article 2 of this Chapter requesting modification of bond requirements. Upon the filing of a verified petition, the clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter. If the clerk of superior court finds that the bond filed or its security is insufficient or inadequate, the clerk shall make an order requiring the personal representative to give a new bond or to furnish additional security within a reasonable time to be fixed in the order.

(b) Increase of Bond upon Sale of Real Estate. – When a personal representative makes application for an order to sell real estate, the provisions of G.S. 1-339.10 shall govern.

(c) Reduction of Bond. – On application of the personal representative the penalty of the bond may be reduced from time to time when the clerk of superior court finds that such reduction is clearly justified, but in no event shall the penalty of the bond be reduced below the amount required by G.S. 28A-8-2(3).

(d) Substitution of Security. – When a bond is secured by a mortgage or deed of trust on real estate as provided in G.S. 28A-8-2(4)c or a deposit of negotiable securities as provided in G.S. 28A-8-2(4)d, the clerk of superior court may, on application of the personal representative, order that such real estate or negotiable securities, or a part thereof, be released upon the substitution therefor of other security in compliance with G.S. 28A-8-2(4)a, (4)c, or (4)d. Such substitution may be allowed in conjunction with any other modification of bond requirements permitted by this section. (1868-9, c. 113, s. 89; Code, s. 1518; Rev., s. 32; C.S., s. 43; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-8-4. Failure to give additional bond; letters revoked.

If any personal representative fails to give an additional bond or new bond or to furnish additional security as ordered by the clerk of superior court pursuant to the provisions of this Article, within the time specified in any such order (not less than five days or more than 15 days), the clerk of superior court shall proceed as provided in G.S. 28A-9-2. (1868-9, c. 113, s. 91; Code, s. 1520; Rev., s. 34; C.S., s. 44; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-8-5. Rights of surety in danger of loss.

Any surety on the bond of a personal representative who is in danger of loss under the surety's suretyship may file a verified petition with the clerk of superior court setting forth the facts, and asking that such personal representative be removed from office, or that the personal representative be required to give security to indemnify the petitioner against apprehended loss, or that the petitioner be discharged as surety and be released from liability for any future breach of the bond. The clerk of superior court shall conduct a hearing in accordance with Article 2 of this Chapter. If, upon the hearing, the clerk of superior court determines that the surety is entitled to relief, the clerk may grant the same in such manner as to serve the best interest of the estate. In any event, however, the previous surety shall not be released from liability for any breach of duty by the personal representative occurring prior to the filing of bond with a new surety unless the new surety assumes liability for the earlier breaches. (1868-9, c. 113, s. 90; Code, s. 1519; Rev., s. 33; C.S., s. 41; 1973, c. 1329, s. 3; 2011-344, s. 4.)

§ 28A-8-6. Action against obligors on bond of personal representative.

Any person injured by the breach of any bond given by a personal representative or collector may institute a civil action against one or more of the obligors of the bond and recover such damages as the person may have sustained. Any successor personal representative, or any other personal representative of the same decedent, may institute such action on behalf of the persons interested in the estate. Any such action against one or more of the obligors of the bond shall be brought in the name of the State of North Carolina and shall be instituted in the county in which letters were issued to the personal representative or collector, and the clerk of superior court shall give notice of the institution of the action in such manner as the clerk may determine to all other persons shown by the clerk's records to be interested in the estate. The bond of the personal representative is not void after the first or any subsequent recovery thereon until the entire penalty is recovered. If the plaintiff fails to prevail, costs may be taxed against the person or persons for whose benefit the action on a personal representative's bond is prosecuted. (1868-9, c. 113, ss. 87, 88; Code, ss. 1516, 1517; Rev., ss. 30, 31; C.S., ss. 40, 42; 1973, c. 1329, s. 3; 2011-344, s. 4.)